

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

GTF Properties, a California
Limited Partnership;
Gordon T. Frost, Jr., in his
individual and representative
capacity as trustee of the Frost
Family Trust;
Pacific Beach Ale House, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No. '14CV2200 W KSC

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Chris Langer complains of Defendants GTF Properties, A California Limited Partnership; Gordon T. Frost, Jr., in his individual and representative capacity as trustee of the Frost Family Trust; Pacific Beach Ale House, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1
2 1. Plaintiff is a California resident with physical disabilities. He is a
3 paraplegic who cannot walk and who uses a wheelchair for mobility. He has
4 a specially equipped van with a ramp that deploys out of the passenger side
5 of his van and he has a Disabled Person Parking Placard issued to him by the
6 State of California.

7 2. Defendants are, or were at the time of the incidents, the real property
8 owners, business operators, lessors and/or lessees for the PB Alehouse
9 located at or about 721 Garnet Avenue, San Diego, California.

10 3. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained
13 of, and alleges a joint venture and common enterprise by all such
14 Defendants. Plaintiff is informed and believes that each of the Defendants
15 herein, including Does 1 through 10, inclusive, is responsible in some
16 capacity for the events herein alleged, or is a necessary party for obtaining
17 appropriate relief. Plaintiff will seek leave to amend when the true names,
18 capacities, connections, and responsibilities of the Defendants and Does 1
19 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

20
21
22 4. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
24 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 5. Pursuant to pendant jurisdiction, an attendant and related cause of
26 action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, and the California Disabled Persons Act, which acts expressly

1 incorporate the Americans with Disabilities Act.

2 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action
4 is located in this district and that Plaintiff's cause of action arose in this
5 district.

6
7 **FACTUAL ALLEGATIONS:**

8 7. The Plaintiff went to PB Alehouse in May of 2014, to eat.

9 8. The PB Alehouse is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 9. Parking spaces are one of the facilities, privileges and advantages
12 offered by defendants to their customers at the PB Alehouse.

13 10. Unfortunately, although parking spaces are one of the facilities
14 available to patrons of the PB Alehouse, there are no van-accessible parking
15 spaces for use by disabled persons who drive vans.

16 11. Instead, defendants only have parking spaces reserved for disabled
17 persons who drive smaller cars and who only need a 60-inch-wide access
18 aisle. Moreover, the parking space itself is just 110 inches wide.

19 12. Plaintiff, on information and belief, alleges that the defendants used to
20 have a van-accessible parking space at the PB Alehouse. However, it has
21 faded, been paved over, or been removed from reserved status.

22 13. Defendants have no policy or procedure in place to make sure that the
23 accessible parking spaces remain maintained and useable in the parking lot.
24 As such, the parking space and access aisle, that is eight feet wide, reserved
25 for disabled persons who drive vans is no longer suitable for disabled
26 customers.

27 14. The plaintiff personally encountered this problem. This inaccessible
28 condition denied the plaintiff full and equal access and caused him difficulty

1 and frustration.

2 15. Plaintiff would like to return and patronize the PB Alehouse but will
3 be deterred from visiting until the defendants cure the violation.

4 16. The defendants have failed to maintain in working and useable
5 condition those features required to provide ready access to persons with
6 disabilities.

7 17. Given the obvious and blatant violations, the plaintiff alleges, on
8 information and belief, that there are other violations and barriers on the site
9 that relate to his disability. Plaintiff will amend the complaint, to provide
10 proper notice regarding the scope of this lawsuit, once he conducts a site
11 inspection. However, please be on notice that the plaintiff seeks to have all
12 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
13 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
14 he can sue to have all barriers that relate to his disability removed regardless
15 of whether he personally encountered them).

16 18. Additionally, on information and belief, the plaintiff alleges that the
17 failure to remove these barriers was intentional because: (1) these particular
18 barriers are intuitive and obvious; (2) the defendants exercised control and
19 dominion over the conditions at this location and, therefore, the lack of
20 accessible facilities was not an “accident” because had the defendants
21 intended any other configuration, they had the means and ability to make the
22 change.

23
24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
25 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against
26 all defendants (42 U.S.C. section 12101, et seq.)

27 19. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 20. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods and services of
4 any place of public accommodation is offered on a full and equal basis by
5 anyone who owns, leases, or operates a place of public accommodation. See
6 42 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part
16 36, Appendix “D.”
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to
21 the maximum extent feasible, the path of travel to the altered
22 area and the bathrooms, telephones, and drinking fountains
23 serving the altered area, are readily accessible to and usable by
24 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

25 21. Any business that provides parking spaces must provide handicap
26 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
27 every eight of those handicap parking spaces but not less than one must be a
28 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991

Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

22. Here, the lack of an accessible van parking space is a violation of the law.

23. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24. Here, the failure to ensure that the accessible parking was available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ § 51-53)

25. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Because the defendants violated the plaintiffs' rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).)

27. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiffs, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
2 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
3 against all defendants) (Cal Civ. § 54-54.8)

4 28. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 29. Because the defendants violated the plaintiff's rights under the ADA,
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.
9 Code § 54.1(d), 54.3(a).)

10 30. Because the violation of the Disabled Persons Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

14
15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
16 plaintiff and against all defendants)

17 31. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 32. The Defendants had a general duty and a duty arising under the
21 Americans with Disabilities Act and the Unruh Civil Rights Act and
22 California Disabled Persons Act to provide safe, convenient, and accessible
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the
24 preceding paragraphs, has caused injury and damage as alleged above.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiffs are not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act and/or the California
9 Disabled Persons Act which damages provide for actual damages and a
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
11 acts, simultaneously, and an election will be made prior to or at trial.

12 3. Reasonable attorney fees, litigation expenses and costs of suit,
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14 Dated: July 31, 2014

CENTER FOR DISABILITY ACCESS

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16 By: 

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18 _____
19 Mark Potter, Esq.
20 Attorneys for Plaintiff
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